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EX PARTE

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> St. SW  
Washington, D.C. 20554

Re: WC Docket 02-307 # 1

Dear Ms. Dortch:

On November 21, 2002, the following persons representing BellSouth met with Christopher Libertelli and Kevin Williams of Chairman Powell's office to discuss issues raised by commenters in the above-referenced proceeding: Sean Lev, Ernest Bush, Kathy Levitz and Glenn Reynolds. The attached documents were provided at this meeting and formed the basis for the discussion.

In accordance with Commission rules, I am filing copies of this notice and attachments and request that they be included in the record of the proceeding identified above.

Sincerely,



Glenn T. Reynolds

cc: Chris Libertelli  
Kevin Williams  
Tamara Preiss  
Scott Bergmann  
Jeff Dygert  
Josh Swift  
Christine Newcomb  
Susan Pie  
James Davis-Smith

## THE FLORIDA PSC'S CONSISTENT REDUCTION OF RATES TO ENSURE THAT THEY ARE WELL WITHIN THE TELRIC RANGE

- In its 600-page May 2001 pricing order, the FPSC explained that it was “using the forward-looking cost standards authorized by Section 252(d)(1) of the 1996 Telecommunications” and the “FCC’s rules and orders implementing that section of the Act,” May 2001 Order at 31, and established a full-set of TELRIC rates. No party disputes that the FPSC consistently sought to apply TELRIC.
- The FPSC simultaneously established a further “120-day” proceeding in which it required BellSouth to do a “bottoms up” run of structure and cable investments for loops, instead of relying upon the in-plant factors that BellSouth had used in its original study.
- Consistent with this Commission’s precedent in the *GA/LA Order* and the *Five State Order*, the FPSC could have relied upon BellSouth’s in-plant factor methodology and not held this additional “120-day” proceeding.
- However, to ensure a pro-competitive environment, the FPSC did hold this additional proceeding, and the proceeding led to further reductions in BellSouth’s loop rates -- reductions that well exceed the effect of BellSouth’s use of inflation in calculating rates.
- Indeed, at the June 2002 Special Agenda Session at which the FPSC reviewed the FPSC staff’s initial recommendation in the “120-day” proceeding *not* to change loop rates from the level set in 2001, FPSC Chairman Jaber specifically emphasized the need to lower loop rates below the level that the FPSC had adopted in 2001. Chairman Jaber stressed that UNE prices “have got to come down” and that, while the AT&T proposal of a \$6.53 UNE-P rate in Zone 1 may be too low, “UNE pricing should be moving in that direction.” June 13 Agenda Session Tr. 8, 17.
- Ultimately, in September 2002, the FPSC adopted new, lower loop rates. The UNE-P loop rate, for instance, was approximately **23% lower** than BellSouth’s “bottoms up” proposal and 8% below the rate that the FPSC set just last year.
- The rates were lower not because of any inherent difference in the in-plant factor and bottoms-up methodologies, but *because the FPSC adopted AT&T’s proposed changes on a series of technical inputs that significantly affected rates*. Among other things, the FPSC:
  - adopted AT&T placing and splicing assumption ( a \$1.19 rate reduction on the UNE-P loop)
  - adopted AT&T placement cost assumption (a \$.53 rate reduction)

- eliminated the 25% closing factor and changed contract labor data (a \$.57 reduction)
  - corrected alleged calculation errors (\$.85 reduction)
  - adopted AT&T facility sharing assumption (a \$.14 reduction)
  - partially accepted AT&T's position on engineering factors (a \$.53 reduction)
- Appendix A to the FPSC's September 27, 2002 order (provided with BellSouth's October 18, 2002 ex parte) shows the full set of rates that the FPSC recently adopted, and demonstrates that they are consistently lower than the rates that the FPSC approved in 2001 and that BellSouth proposed in the new proceeding.
- All these steps that the Florida PSC has taken to push UNE rates to the lower end of the TELRIC range far outweigh any alleged error in accounting for inflation.
- For instance, BellSouth has calculated that its UNE-P rate would be reduced by \$.40 (2.2%) per month (from \$18.28 to 17.88) if inflation in material prices were not considered. AT&T has reached the nearly identical conclusion that the effect is \$.43 per month. Similarly, the rate for the designed SL2 loop, which AT&T contends it relies upon for unbundled loops, would decrease by only 1.1% and the non-designed SL1 loop rate would decrease by 2.2%.
- Given these modest differences, even if incorrect (which BellSouth disputes), the FPSC's treatment of the inflation issue could take BellSouth's rates out of "the range that the reasonable application of TELRIC principles would produce" only if current Florida rates were at the absolute top of the permissible TELRIC range. *GA/LA Order* ¶ 23.
- That is not remotely the case. On contrary, as discussed above, the Florida PSC has consistently pushed rates down to the lower end of the TELRIC range. Indeed, the Florida PSC's decision to cut BellSouth's cost of capital from 11.25% (a figure adopted by other PSCs in states where BellSouth has obtained section 271 authority) to 10.24% by itself far outweighs any effect of inflation. In sum, there are more than "reasonable grounds" to conclude that the rates set by the Florida PSC are comfortably within the TELRIC range. *See WorldCom, Inc. v. FCC*, No. 01-1198, 2002 U.S. App. LEXIS 22009, at \*12 (D.C. Cir. Oct. 22, 2002).

## **EXPEDITE CHARGE**

- BellSouth/AT&T Interconnection Agreement provides:  
“BellSouth may bill expedite charges for expedited due date and will advise AT&T of any charges at the time the offered date is provided.” AT&T does not challenge BellSouth’s right to assess charge for expediting orders.
- Interconnection Agreement specifically leaves amount of expedite charge subject to determination at the time of AT&T’s request—*BellSouth “will advise AT&T of any charges at the time the offered date is provided.”*
- Where rates left unspecified in agreements, BellSouth typically looks to approved tariffs rates for analogous services. This practice specifically recognized in BellSouth/AT&T Interconnection Agreement. Failure to point to some analogous charge would surely subject BellSouth to criticism that it was being arbitrary.
- BellSouth is not legally obligated to expedite orders unless it agrees to do so. Non-discriminatory access is provided through standard provisioning intervals mandated by the state commissions and subject to penalties. Eighth Circuit *Iowa Utilities Board* decision reversed previous efforts of FCC to interpret sections 251(c)(3) as requiring ILECs to provide “superior quality” access on request.
- Since expedition is not mandated by 251(c)(3), TELRIC pricing requirements of 252(d)(1) cannot apply.
- BellSouth expedite charge is non-discriminatory.
  - *No expedite charge is assessed on UNE-P or resale.*
  - For UNE-L conversions, BellSouth looked to its *retail special access* tariff as appropriate analog because work necessary for services similar. BellSouth assesses precisely the same \$200/day/line charge to

expedite for its own retail special access customers. As such, the charge can hardly be called patently anti-competitive or unsupported.

- AT&T has never raised this issue with the Florida PSC and should not be allowed to raise it for the first time in a 271 proceeding before the FCC.
  - To the extent AT&T believes this charge is a “UNE” subject to TELRIC pricing, it should have—indeed was obligated to—raise it in the context of the extensive state pricing proceedings. Given the provisions in its Interconnection Agreement, AT&T cannot argue that the need for an expedite charge was somehow unforeseeable.
  - More appropriately, however, this issue is nothing more than a standard contract issue. The parties to the interconnection agreement knowingly and intentionally left the amount of any expedite charge subject to determination at a later date. Commercial agreements commonly leave such terms open because of the difficulty of negotiating every possible future occurrence.
  - BellSouth now has quoted AT&T what it believes to be an appropriate rate under the contract. Under these circumstances, the BellSouth/AT&T Interconnection Agreement provides AT&T several specific remedies including escalation within BellSouth and appeal to the state commission. *AT&T has not sought to exercise any of these other remedies.*

**FPSC-ESTABLISHED RATE FOR SL2 LOOP CONVERSIONS WITH TIME-SPECIFIC ORDER COORDINATION**

- The \$160 rate AT&T highlights is not a general hot cut rate, but rather the nonrecurring rate for conversion of a single designed (SL2) loop with time-specific order coordination. About \$135 of that is the nonrecurring charge for the SL2 loop. Most of the rest is a per order (not per loop) conversion charge.
- Only 16 of the approximately 4700 new SL/SL2 loops in Florida in August were of this variety.
- For comparison, the nonrecurring cost for an SL1 (non-designed) loop without order coordination costs \$51.09 in Florida.
- AT&T's current UNE-P customers in Florida are served over the equivalent of an SL1 loop. Since AT&T already knows that service is being provided adequately to these customers, it is unclear why AT&T would need an SL2 loop to convert them to UNE-L.
- The higher price for the conversion of the designed SL2 loop with time-specific order coordination reflects real work that must be done. Designed loops require full design layout records and the installation of test points, among other things. These additional features give CLECs that chose them advantages, however. For instance, there are significantly shorter maintenance times for designed loops (approximately 4.5 hours as opposed to 12). *See Oct. 25 Ex parte*. Additional labor costs are also incurred in providing time-specific order coordination.
- BellSouth fully supported these costs in studies provided to the FPSC. They are also discussed in the Caldwell Reply Affidavit.
- Indeed, BellSouth's studies supported a nonrecurring rate of more than \$200 for this particular kind of loop, but the FPSC cut the rate substantially.
- Before the FPSC, AT&T's argument that even this substantially reduced rate was too high was based on an extreme and unreasonable set of assumptions. As explained in detail in the Caldwell Reply Affidavit, AT&T's witness assumed the automation of manual processes even though that automation apparently does not exist in any ILEC network.
- The Florida PSC reasonably accounted for the record evidence on this point. It stressed that "[i]n his review and critique of BellSouth's cost studies [AT&T] witness King essentially assumed, e.g., the existence of a fully automated ordering system which could identify all errors on an electronically submitted local service request (LSR) and resubmit it to [a CLEC]. However, he subsequently admitted that he was unaware if such a system had actually been implemented anywhere." *FPSC UNE Rate Order* at 332. The FPSC did not

believe that such a system was “reasonably achievable,” and thus declined to adopt Mr. King’s proposals. The FPSC reasonably resolved this fact-intensive issue and decided not to adopt AT&T’s proposals in full.

- Additionally, although AT&T has relied in this proceeding on comparisons to rates in states outside of BellSouth’s region, this Commission has rejected the argument that comparison of nonrecurring rates between states, especially to non-BellSouth states, is significant here. *See Five State Order* ¶ 125; *New Jersey Order* ¶ 70 n.193. In any event, if a comparison were relevant, the Florida rate is lower than the one in Kentucky, where BellSouth has received section 271 approval.
- BellSouth consistently meets hot cut submetrics in Florida. Between May and July 2002, BellSouth met or exceeded every benchmark for each of the hot-cut submetrics. BellSouth provisioned 99.9% of scheduled conversions on time during this three-month time period. BellSouth also performed these cutovers with less than 1% of service outages each month.